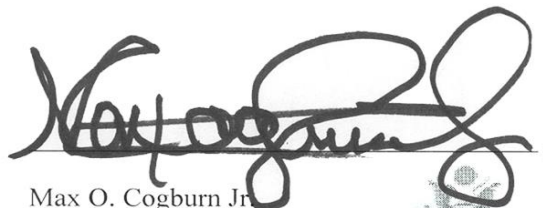




the position that whether prior offenses were committed on occasions different from one another falls outside of the Almendarez-Torres exception and therefore should be submitted to the jury or admitted by the defendant.” (Id.).

In Almendarez-Torres v. United States, 523 U.S. 244 (1998), the Supreme Court held that the facts supporting a recidivism enhancement are resolved by the district court during sentencing. In United States v. Thompson, the Fourth Circuit applied the holding of Almendarez-Torres to § 924(e), and concluded that “district courts may, consistent with the Constitution, use information ‘found in conclusive judicial records’ to determine at sentencing that the defendant has three qualifying convictions committed on different occasions, thus triggering the ACCA enhancement.” Brown, 67 F. 4th at 201 (quoting Thompson, 421 F.3d 278, 285–86 (4th Cir. 2005)). More recently, the Fourth Circuit expressly concluded that the Supreme Court’s decision in Wooden did not narrow or overrule Almendarez-Torres. (Id.). Thus, the Government’s request to bifurcate trial is—as the Government admits—directly foreclosed by binding circuit precedent. (Doc. No. 44 at 2).

This Court is bound by the Fourth Circuit’s decision in Brown. Thus, the Court has no choice but to deny the Government’s motion.



Max O. Cogburn Jr.  
United States District Judge